



February 2, 2023

Dr. Steven Markowitz, Chair
Advisory Board on Toxic Substances
and Worker Health
Queens College, Remsen Hall
65-30 Kissena Boulevard
Flushing, NY 11367

Dear Dr. Markowitz:

Thank you for your letter dated December 21, 2022, transmitting the recommendation adopted by the Advisory Board on Toxic Substances and Worker Health (Advisory Board or Board) during its meeting on December 1, 2022. On behalf of Secretary of Labor Martin J. Walsh, to whom you addressed your letter, the Office of Workers' Compensation Programs (OWCP) responds to the recommendation herein.

The Board adopted the following recommendation regarding Exposure Evaluations for Claimants Who Worked Widely Within a Department of Energy (DOE) Site:

The Board recommends that the Department of Labor [DOL or Department] provide instruction to claims examiners, industrial hygienists, and contract medical consultant reviewers that, if there is evidence that a claimant's employment led to their routine duties being performed widely across a site, this be specifically noted in the claim file and that consideration be given in establishing toxic substance exposure and causation for exposures that are site-wide and not just limited to their work area of record.

Supporting its request, the Board provided the following rationale:

The Board recognizes that the Site Exposure Matrices [SEM] is a very useful tool for identifying some potential exposures to toxic substances at Department of Energy sites in relation to claims for compensation. However, there is broad agreement that, due to the incomplete nature of historic data or other evidence concerning potential exposures that occurred at Department of Energy sites, the Site Exposure Matrices provide only a partial view of such potential exposures. This limitation is in part mitigated by other sources of exposure information that are used in the claims' evaluation process.

This limitation in the Site Exposure Matrices is most conspicuous for occupations whose work tasks routinely require that they work in many areas and buildings at a Department of Energy site. These occupations include, for example, security guards, firefighters, health physics technicians and others. We have noted very considerable variation in the number and types of toxic substances associated with these job titles at different sites with the

Department of Energy complex.

To address the limitation in the Site Exposure Matrices for these occupations, the claims examiners can ensure a more informed and fairer evaluation of potential exposures for a defined and finite set of these occupations through identifying their claims and through the routine referral of their claims for an industrial hygiene evaluation, indicating in the request that it is accepted that the claimant may have had a broader profile of exposure to toxic substances than the Site Exposure Matrices indicates. Such a communication should also be made to any contract medical consultants who are providing evaluations of these claims.

DOL Response: The recommendation noted above is similar, in nature, to previous recommendations offered by the Board. In response to those, DOL issued letters dated June 2, 2020, and November 5, 2020. A summary of our responses is noted below.

On June 2, 2020, we noted:

“...there are essentially two ways to create a SEM labor category profile, and often the profile is a combination of both. Because there are some jobs that are unique to DOE facilities, such as nuclear weapons assembly and disassembly, DOE possesses specific information about those processes. As such, DOE documents form the basis of the profile. As facility-specific documentation inform the profiles for security guard and health physics technicians, the number of corresponding toxic substances for each profile are different. For jobs not unique to DOE, such as roofers, DOE did not maintain specific information and therefore the SEM team has used industry information to create a profile.”

On November 5, 2020, we further stated that:

“...the assignment of toxic substance exposures to positions, such as firefighters, security guards, health physics technicians, and safety personnel, is dependent on site-specific data. The Department has provided to the Board the site profile information it requested to further assess this topic. It is the Department’s position that it is inappropriate to assign such a broad classification of exposure to specific labor categories in the absence of any underlying documentary support. Accordingly, the Department does not agree with the Board’s recommendation. The Department remains willing to dialog further with the Board about specific toxic substance exposures that the Department could assign to highly mobile workers at particular facilities.”

Regarding the current recommendation, the Department continues to hold the position that broad-based generalizations are not appropriate in the absence of specific evidentiary support for particular labor categories. However, we want to reiterate that claims examiners are trained to consider the evidence of file specific to the individual claimant and use that data to link the particular employee to potential exposures. The Procedure Manual also provides clear guidance to claims examiners that examination of exposure is a holistic effort that considers information

from many sources. The information assembled by the claims examiner in the case file as described above can be considered, if needed, by subject matter experts like industrial hygienists and contract medical consultants. In summary, the Department will consider any specific information provided by the claimant during the collection of evidence about their work activities/locations and assign exposure based on data that reasonably connects an employee to a specific toxic substance through a labor category, work process, incident, or other factor.

On behalf of the Department, the Office of Workers' Compensation Programs, Division of Energy Employees Occupational Illness Compensation, and the communities we serve, I look forward to the continued efforts of the Advisory Board.

Sincerely,

Christopher J. Godfrey
OWCP Director